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MISCELLANY.

"THE characters of some men are made of granite; those of others seem to be but sand and clay. In the action and interaction of the wild waves of life, which sweep in stormy surges through the lives of most professional men, all the perishable parts are washed away, and there appear the rock-ribbed hills, which stand for firmness, for integrity, for nobility of aims, on whose sides can be seen inscribed, in characters to be read by all, the lessons of their lives; and as they recede in that haze of years which pass one by one like cloud-rifts before us, finally the illumined summits appear on which the eyes love to linger, because they point to an atmosphere of holiness."—*From address of Hampton L. Carson, at the dedication of Price Hall, in the new Law School building of the University of Pennsylvania, Feb. 22, 1900.*

WORK OF THE COURT OF APPEALS.—A statement of the business done by the court at its November term, 1899, and at the January and March terms, 1900:

Whole number of cases on docket.....	100
Final judgments.....	91
Cases continued, not being ready to be heard.....	9
	— 100
Petitions for appeals and writs of error examined from October	
1, 1899, to March 31, 1900.....	110
Allowed	71
Refused.....	39
	— 110

The entire docket was disposed of, and the court adjourned to meet at Wytheville on Tuesday, June 5.

REAL REPRESENTATIVE—ENGLISH LAND TRANSFER ACT, 1897.—We print below a copy of the English statute of 1897, providing for the appointment of a representative to administer the real estate of a decedent—omitting such portions as refer to copyhold and other estates not known in America. So long as lands were not assets for the payment of debts, or were such to a limited extent only, there was some reason why the title to real estate should vest at once in the heirs or devisees, without the intervention of a representative. But since such estate has been made liable for all debts of the decedent, no good reason exists for the awkward rule still prevailing with us in Virginia, that an executor or administrator (in the absence of power conferred by the will) has no concern with the decedent's real estate—and the latter can be subjected to the payment of debts only by the tedious and expensive process of a chancery suit.

In many of the States the personal representative is authorized by statute to sell the real estate, or to apply to a court of probate for the necessary authority. In Virginia, his only duty is in connection with the personal property, and he is a complete stranger to the realty. We publish this statute in the hope that it may thus be brought to the attention of the State Bar Association, and through it

to the attention of the legislature. The English Act would need but little modification to conform it to the situation in Virginia :

I.—(1) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4) This section applies only in cases of death after the commencement of this Act.

II.—(1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in them or him, save that it shall not be lawful for some or one only of several joint personal representatives, without the authority of the court, to sell or transfer real estate.

(3) In the administration of the assets of a person dying after the commencement of this Act, his real estate shall be administered in the same manner, subject to the same liabilities for debt, costs, and expenses, and with the same incidents, as if it were personal estate ; provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

(4) Where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next-of-kin, shall be equally entitled to the grant with the next of kin, and provision shall be made by rules of court for adapting the procedure and practice in the grant of letters of administration to the case of real estate.

III.—(1) At any time after the death of the owner of any land, his personal representatives may assent to any devise contained in his will, or may convey the land to any person entitled thereto as heir, devisee, or otherwise, and may make the assent or conveyance, either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge ; and on such assent or conveyance, subject to a charge for all moneys (if any)

which the personal representatives are liable to pay, all liabilities of the personal representatives in respect of the land shall cease, except as to any acts done or contracts entered into by them before such assent or conveyance.

(2) At any time after the expiration of one year from the death of the owner of any land, if his personal representatives have failed on the request of the person entitled to the land to convey the land to that person, the court may, if it thinks fit, on the application of that person, and after notice to the personal representatives, order that the conveyance be made, or, in the case of registered land, that the person so entitled be registered as proprietor of the land, either solely or jointly with the personal representatives.

IV.—(1) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person, or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the court, and such valuation and appropriation shall be conclusive save as otherwise directed by the court.

RECENT LEGISLATION IN VIRGINIA.—We continue the synopsis of recent Acts of general interest passed at the late session of the legislature. At the time this is prepared the official publication is incomplete, and hence the synopsis is not exhaustive.

Acknowledgment of deeds—Validating acknowledgments heretofore taken by commissioners in chancery appointed by the county courts (p. 851).

Acknowledgment of deeds for registry—Providing that acknowledgments of deeds of trust heretofore taken by clerks of courts shall be valid, notwithstanding the clerk be trustee in the deed (p. 1247).

The Act recites that "a doubt has arisen" as to the authority of clerks to certify acknowledgments in such cases. If there was ever any doubt about it it was removed by the decision in *Davis v. Beazley*, 75 Va. 491, some twenty years ago, affirmed by a line of subsequent cases. See *Nicholson v. Gloucester etc. School*, 93 Va. 101.

The title to the Act refers to acknowledgments certified by county clerks only, while the body of the Act refers to acknowledgments certified by clerks of courts generally.

Legislation of this character is to be deprecated. If it be proper that parties shall thus act as judges in their own cases, why extend the privilege to county clerks only, and why not make it prospective as well as retrospective?

The constitutionality of this Act is doubtful, in so far as it affects priorities already fixed.

Attorneys for the commonwealth—Amending Code, sec. 3528, with respect to their fees (p. 841).

Attorneys at law—disbarment—Amending Code, secs. 3195 and 3196, and repealing sec. 3197 (p. 1060).

This Act is in the precise form as recommended by the State Bar Association at its last meeting. See 5 Va. Law Reg. 338.

Banks of circulation—

1. Authorizing the formation of “associations” for conducting banks of circulation—with elaborate provisions for their government (p. 819).

In its title the Act purports to be amendment of an Act approved March 4, 1894, but no reference is made to the latter in the body of the Act. No assent of any judge, court or other official is required in order to form such an association.

This Act was probably passed in anticipation of a repeal of the tax laid by the Federal government on circulating notes issued otherwise than by national banks.

2. Amending Code, sec. 3830, prescribing a penalty for unlawfully issuing money or other circulating medium (p. 805).

Constitutional convention—Act authorizing the submission of the question of a constitutional convention to a vote of the people—election to be held on the fourth Thursday in May, 1900 (p. 835).

Court of Appeals—Amending Code, secs. 3089 and 3090, by transferring appeals from Patrick and Franklin counties from Wytheville to Richmond.

Criminal trials—Repealing Act approved March 3, 1892 (Acts 1891–2, p. 973), requiring prisoners charged with a capital crime in the county court “to select (*sic*) in which court he shall be tried, before making a motion for a continuance” (p. 1075).

As by Acts of 1893–4, p. 270, county courts are given *exclusive* original jurisdiction of all felonies (including capital cases), thereby repealing the previous right of the accused to elect to be tried in the circuit court in capital cases, the purpose of the foregoing Act is not apparent.

Deeds of trust—Amending Act of 1897–8, p. 322, with respect to conveyances made in execution of deeds of trust, etc., and their effect as instruments of evidence (p. 1247).

The original Act of 1897–8 was intended to overrule the doctrine laid down in *Sulphur Mines Co. v. Thompson*, 93 Va. 293, that a conveyance made by one having a naked power, and not title, is not evidence of the facts recited in it with respect to the regular execution of the power. The change made by the later Act is to extend it to powers conferred by “deed” as well as deed of trust or mortgage.

Delinquent lands—

1. Amending Code, sec. 666—“Land Grabbers’” Act (p. 852).

2. Amending Code, sec. 661—by prescribing additional grounds upon which tax titles may be assailed, and limiting the right to two years (p. 1234).

Electric companies—Authorizing such companies to cross, with their works, the works of other internal improvement companies, on conditions named (p. 1074).

Fees on charters of corporations—Amending numerous previous Acts on this subject (p. 883).

Injunctions—Amending Code, sec. 3436, with reference to jurisdiction of injunctions—by restricting jurisdiction to enjoin a judgment or judicial proceeding to the court which entered it or in which the proceeding is pending, except in case of county courts (p. 997).

It is probable that this still applies only to a pure bill of injunction, and not to injunctions ancillary to some other relief. See *Muller v. Bayly*, 21 Gratt. 521, 531.

Imitation butter—To regulate the sale and use of (p. 1006).

The title purports to be amendatory of a previous Act, but no reference is made thereto in the body of the Act.

Insane persons—Amending Code, secs. 1660 to 1712, with reference to State hospitals and commitment of insane persons (p. 1036).

Jurors in civil cases—

1. Amending Code, sec. 3142—chiefly by extending its provisions to circuit courts and to the special courts for Richmond and Norfolk (p. 997).

2. Amending Code, sec. 3144, with reference to depositing names of eligible jurors in ballot box (p. 1012).

3. Amending Code, sec. 3146, with respect to selection of (p. 1252).

4. Amending Code, sec. 3147, with respect to the number of jurors to be summoned (p. 1125).

5. Amending Code, sec. 3152, with respect to discharging jurors (p. 1126).

Justices of the peace—criminal jurisdiction—Amending Acts 1897–8, p. 289, with reference to criminal jurisdiction of justices—by authorizing the commonwealth's attorney to prosecute before the justice, and providing for such attorney's compensation (p. 838).

Local assessments—

1. Repealing Code, sec. 1043, as amended by Acts 1895–6, p. 799 (p. 1099).

2. Elaborate provisions for local assessment—applicable to all cities and towns, whether acting under special charter provisions or not (p. 1147).

As far as now recalled, the last case in Virginia in which a local assessment, laid by a municipal corporation, was sustained, was *Davis v. Lynchburg* (84 Va. 861), decided in 1888, though the Court of Appeals has passed upon at least six, and possibly more, since that case. Most of these failed, by reason of the insufficiency of the charter provision under which the proceeding was attempted. In view of this circumstance this Act is most timely. Upon a hasty examination it seems to have been carefully drawn.

Married women—

1. Repealing Code, secs. 2284–2290, inclusive, and secs. 2292 and 2295; amending secs. 2291–2294, inclusive, and sec. 2296 (p. 1240).

The recent radical legislation on this subject is elsewhere discussed.

2. Amending Code, sec. 2298—with respect to remedies under the Smith Act (p. 602).

3. Amending Code, sec. 2513—by striking out the prohibition against a married woman making a will (p. 753).

4. Amending Code, sec. 2615, in respect to leases on behalf of persons under

disability—by striking out married women from the enumeration of persons under disability (p. 770).

5. Amending Code, sec. 3435, in respect to bills of review—by striking out married women from the enumeration of persons under disability, and all reference to married women (p. 770).

6. Amending Code, sec. 2564, with respect to partition of estates—by striking out all reference to the estates of married women (p. 880).

Officers' fees—Providing that whenever a *feri facias* is returned by an officer without levy, or forthcoming bond taken, he shall be entitled to a fee of 50 cents (p. 942).

Pension Act—Elaborate legislation with respect to pensioning needy ex-Confederate soldiers and sailors and their widows (p. 1257).

Prison Association of Virginia—Authorizing the commitment of minors to the custody of the Association—all such commitments to be for indeterminate periods (p. 931).

Public highways—Amending Code, sec. 3856, with reference to riding or driving on sidewalks in unincorporated villages—by restricting the prohibition to sidewalks “constructed of any material *other than dirt or earth*,” and the penalty to a fine instead of a fine or imprisonment (p. 1115).

Wheelmen will take notice that they may ride on dirt sidewalks in unincorporated villages. If the earth be baked into bricks, *quere!*

Pure-food bill—Elaborate provisions to prevent the sale of adulterated or misbranded articles of food (p. 694).

Railroads—

1. To prevent trespassing on railroad trains—“Anti-tramp” Act (p. 743).

2. To prevent trespassing on railroad trains—“Anti-tramp” Act number 2—no reference made to number 1—both approved on the same day (p. 775).

Release of liens—Amending Code, sec. 2498, as already amended at this session, found on page 80 of the Acts (p. 839).

The only change noted is in the increase of the clerk’s fee from twenty-five to fifty cents.

Taxation—

1. Providing for apportionment of taxes, in case of joint ownership and subsequent partition (p. 731).

2. Amending Code, sec. 833, with respect to assessment of capital employed in mercantile business (p. 731).

3. Providing for collection of taxes on corporate shares (p. 740).

Telegraph companies—

1. Subjecting such companies to special damages for negligence; authorizing damages for mental suffering; invalidating regulation requiring repetition of messages; and denying the right of companies to contract against their own negligence (p. 724).

No reference is made in this Act to one of a similar character (p. 369) noticed in our April number.

2. Amending Code, sec. 1292, with respect to delivery of messages, by telegraph and telephone companies (p. 996).

Uniformity of legislation—Authorizing the appointment by the Governor of a commission of three, for the promotion of uniformity of legislation in the United States (p. 1001).

Venire facias in felony cases—Amending Code, sec. 4018, by prescribing that one jury only shall be summoned (instead of two as heretofore) (pp. 566, 672).

It was erroneously stated in our last issue that no material change had been made by this amendment. We are grateful to several correspondents who have called our attention to the error.

The two amendments, one approved February 26 and the other March 5, 1900, are identical in language.

Venue of actions—Amending Code, sec. 3214, sub-sec. 7, with reference to venue of actions or suits in which a judge of the circuit court is interested, when otherwise proper to be tried in his court (p. 769).

Wages of a laboring man—waiver of exemption—In the printed Acts is a statute purporting to authorize the waiver of the exemption of wages not to exceed \$50 a month (p. 1119). But we are credibly informed that the Act was *not signed by the Governor, and appears in the volume by mistake.*